

## Subchapter H—Clauses and Forms

### PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 2852.1—Instructions for Using Provisions and Clauses

Sec.

2852.102 Incorporating provisions and clauses.

2852.102-270 Incorporation in full text.

#### Subpart 2852.2—Text of Provisions and Clauses

2852.201-70 Contracting Officer's Technical Representative (COTR).

2852.211-70 Brand-name or equal.

2852.223-70 Unsafe conditions due to the presence of hazardous material.

2852.233-70 Protests filed directly with the Department of Justice.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

SOURCE: 63 FR 16135, Apr. 2, 1998, unless otherwise noted.

#### Subpart 2852.1—Instructions for Using Provisions and Clauses

**2852.102 Incorporating provisions and clauses.**

**2852.102-270 Incorporation in full text.**

JAR provisions or clauses shall be incorporated in solicitations and contracts in full text.

#### Subpart 2852.2—Text of Provisions and Clauses

**2852.201-70 Contracting Officer's Technical Representative (COTR).**

As prescribed in subpart 2801.70, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (JAN 1985)

(a) Mr./Ms (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Technical Representative (COTR) under this contract.

(b) The COTR is responsible, as applicable, for: receiving all deliverable, inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the

contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes.

(End of Clause)

**2852.211-70 Brand-name or equal.**

As prescribed in 2811.104-70, insert the following clause:

BRAND-NAME OR EQUAL (JAN 1985)

(a) The terms "bid" and "bidders", as used in this clause, include the terms "proposal" and "offerors". The terms "invitation for bids" and "invitational", as used in their clause include the terms "request for proposal" and "request".

(b) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of a brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics and requirements listed in the invitation.

(c) Unless the bidder clearly indicates in his/her bid that he/she is offering an "equal" product, his/her bid shall be considered as offering the brand name product referenced in the invitation for bids.

(d)(1) If the bidder proposes to furnish an "equal" product, the branch name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determinations to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or

## Department of Justice

2852.233-70

identified in his/her bid as well as other information reasonably available to the purchasing activity. To ensure the sufficient information is available, the bidder must furnish as a part of his/her bid all description material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to: (i) determine whether the product offered meets the salient characteristics requirements of the invitation for bids, and (ii) established exactly what the bidder proposed to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the invitation for bids, he/she shall: (i) include in his/her bid a clear description of such proposed modification, and (ii) clearly mark any description material to show the proposed modifications.

(3) Modifications proposed after the bid opening to make a product conform to a brand name product referenced in the invitation for bids will not be considered.

(End of Clause)

### **2852.223-70 Unsafe conditions due to the presence of hazardous material.**

As prescribed in 2823.303-70, insert the following clause:

#### **UNSAFE CONDITIONS DUE TO THE PRESENCE OF HAZARDOUS MATERIAL (JUN 1996)**

(a) "Unsafe condition" as used in this clause means the actual or potential exposure of contractor or Government employees to a hazardous material as defined in Federal Standard No. 313, and any revisions thereto during the term of this contract, or any other material or working condition designated by the Contracting Officer's Technical Representative (COTR) as potentially hazardous and requiring safety controls.

(b) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require contractors to appraise its employees of all hazards to which they may be exposed in the course of their employment; proper conditions and precautions for safe use and exposure; and related symptoms and emergency treatment in the event of exposure.

(c) Prior to commencement of work, contractors are required to inspect for and report to the contracting officer or designee the presence of, or suspected presence of, any unsafe condition including asbestos or other hazardous materials or working conditions in areas in which they will be working.

(d) If during the performance of the work under this contract, the contractor or any of its employees, or subcontractor employees, discovers the existence of an unsafe condition, the contractor shall immediately notify the contracting officer, or designee, (with written notice provided not later than three (3) working days thereafter) of the existence of an unsafe condition. Such notice shall include the contractor's recommendations for the protection and the safety of Government, contractor and subcontractor personnel and property that may be exposed to the unsafe condition.

(e) When the Government receives notice of an unsafe condition from the contractor, the parties will agree on a course of action to mitigate the effects of that condition and, if necessary, the contract will be amended. Failure to agree on a course of action will constitute a dispute under the Disputes clause of this contract.

(f) Notice contained in this clause shall relieve the contractor or subcontractors from complying with applicable Federal, State, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material including but not limited to the use, disturbance, or disposal of such material.

(End of Clause)

### **2852.233-70 Protests filed directly with the Department of Justice.**

As prescribed in 2833.102(d), insert a clause substantially as follows:

#### **PROTESTS FILED DIRECTLY WITH THE DEPARTMENT OF JUSTICE (JAN 1998)**

(a) The following definitions apply in this provision:

(1) "Agency Protest Official" means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(2) "Deciding Official" means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(3) "Interested Party" means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) A protest filed directly with the Department of Justice must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(a)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protestor is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of this protest.

(c) An interested party filing a protest with the Department of Justice has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer. The Agency Protest Official will not consider appeals from the Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for many officials to present information in response

to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official may request additional information from either the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(h) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not reimburse the protestor for any legal fees related to the agency protest.

(i) The Department of Justice will stay award or suspend contract Performance in accordance with FAR 33.103(f). The stay or suspension unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official will make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written.

(k) The Department of Justice may dismiss or stay proceeding on an agency protest if a protest on the same or similar basis is filed with a protest forum outside the Department of Justice.

(End of Clause)